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Malpractice

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IT IS an unfortunate fact that the professional man, by the very nature of things, fails in many instances to accomplish the desired results—veterinarians being no exception. This places him in a position where he is readily charged with failure of performance of his professional duty, usually referred to as *malpractice*. Therefore, it is certainly important that the members of a profession have knowledge as to their legal obligations when they undertake to render a service. Here-with are presented the fundamental legal aspects of malpractice rather than specific considerations such as these will suggest. Such can very properly be left for some later time after the fundamental principles have been established. It must be acknowledged that an application of such principles will give a fuller appreciation of the subject of malpractice.

It has been said that the most important requirement for a malpractice suit is an attorney in the community in an advanced stage of malnutrition. Be that as it may, we will confine ourselves to the legal elements of this bugaboo of the practitioner.

Definitions

Malpractice literally means "bad practice." Courts have in their decisions variously defined it. We find such expressions as: "bad or unskillful practice," "negligent performance," "treatment contrary to accepted rules," "bad professional treatment," "professional misconduct or any unreasonable lack of skill or fidelity in performance of professional or fiduciary duties," "objectionable practice". The underlying element in each of these is either *willfulness* or *negligence*. The term willfulness is sufficiently self-explanatory, but the concept of negligence is not so easily perceived. Our most important consideration, then, in determin-

ing what constitutes malpractice is to get a proper concept of negligence.

Negligence upon which legal action may be taken has three elements essential to its existence: (1) a duty on the part of the defendant to protect plaintiff from the injury; (2) failure of defendant to perform that duty; and (3) injury to plaintiff from such failure.

As applied to the veterinarian we can say that negligence (exclusive of the element of injury), consists in his doing something which he should not have done or omitting to do something which he should have done; or, more specifically, *his failure to exercise the required degree of skill, care, and diligence, or his failure to possess the required degree of skill or learning, or a failure to exercise his best judgment.*

Legal Duties

These duties devolve upon him from a contractual relationship with his client. In undertaking the performance of a task he impliedly contracts with his client that he possesses and will use in his treatment the required degree of skill and learning, and that he will exercise the required degree of care, diligence, and his best judgment. This is true even where the service is gratuitous, or where there is no contract of employment, the duty arising from the undertaking.

This still leaves open the question as to what as a practical matter is required of the practitioner. That is, we must establish the standards by which such as *required degree* of skill, care, etc. are judged—the measures of the veterinarian's obligations to his client.

It is well established that in the absence of a special agreement a professional man is required to possess that degree of skill and learning ordinarily possessed by the members of his pro-

fession in good standing. This means a reasonable degree of skill and learning, such as is possessed by the average of those in his profession, and not those most skilled or most educated. One court laid down the requirement that he must possess that reasonable degree of learning and skill which is ordinarily possessed by the professors of the same art or science. Is such a reflection on the professors, an attempt to reduce them to the average, or possibly a high standard?

Care and Diligence

Furthermore, the practitioner in discharging his duty as to the exercise of the required degree of care and diligence, is bound to exercise such degree of care and diligence as would ordinarily be employed by the members of his practice under like or similar circumstances. This was adequately set forth in an Iowa case in which it was declared that, "The true measure is that (degree of skill and diligence) ordinarily exercised in the profession by the members thereof as a body, the average of the reasonable skill and diligence ordinarily exercised by the profession as a whole. Not that exercised by the thoroughly educated; not yet that exercised by the moderately educated, nor merely of the well educated, but the average."

These requirements must be qualified in that consideration must be given to the state of the science in respect to treatment of the particular case. Where the particular practice has not yet become certain and exact, there is a greater assumption of risk on the part of the client, providing the practitioner exercises his best judgment. This does not mean that the veterinarian is free to experiment at the risk of his client. In the use of a comparatively new practice, power or force, the properties of which are not fully known or understood, the exercise of great care is required. Such again means care as would be exercised by the average, prudent practitioner.

General Rule

The general rule established above as to the degree of skill, learning and care

required is usually also qualified by a consideration of the state of practice in a locality or localities. Numerous authorities hold that the skill, learning and care required are those exercised by others engaged in the same line of practice in the same locality, vicinity or neighborhood. Others base the requirements upon similar localities or neighborhoods. As a result, in many instances these elements are required of rural practitioners to a lesser degree than of those in urban communities. Such a distinction is subject to real criticism. It certainly suggests a problem arising from the possibility of a situation where the practitioners in a locality are all quacks. What, in such a case, would be the standard?

Such a distinction as this undoubtedly had its foundation in the conditions existing during the development of our country, when new methods and knowledge were not readily available on our frontiers. With the breaking down of barriers to free intercourse, and with a greater exchange of knowledge and learning, and with existing ways and means for obtaining such, the importance of this qualification is bound to diminish.

Selection of Treatment

The veterinarian frequently finds himself in a position where there are alternative practices and methods. Where such are accepted and recognized methods of treatment, he is free to choose without subjecting himself to the charge of negligence. When, however, the consensus of opinion of the members of the profession favors a particular mode of treatment it should be followed. Any deviation from such a course is undertaken at the practitioner's own peril, making him liable for any resulting injury.

Frequently the question arises as to whether a practitioner has a legal duty to render professional services to all who apply. Leaving aside ethical considerations, he may *arbitrarily* refuse to respond to a call, a failure to do so not being malpractice since there is no legal duty.

Where, however, a veterinarian has undertaken a case he is bound to continue his services as long as the case

The Significance of the X-Ray in Veterinary Medicine

RUSSELL BEAMER

IN THE years between the announcement of their discovery by Wilhelm Konrad Roentgen, on December 28, 1895, and the present, x-rays have contributed greatly in advancing medical knowledge. In internal medicine, surgery and dentistry these rays have been of very great value in the practice of veterinary medicine as a diagnostic aid but until recently their importance and value in the practice of veterinary medicine and surgery have been little appreciated. Trained veterinary scientists, unfortunately, have made no concerted effort to apply x-rays in the study and diagnosis of animal pathology. It is the firm conviction, however, of those who have engaged in this work that its importance and value will increase as more experience is gained. The veterinary profession of recent years has become x-ray conscious and rightfully so, as there is an important, necessary, useful field for its use in veterinary medicine. However, the use of the x-ray is not entirely without its hazards.

Hazards

There are two "hazards" commonly associated with the operation of x-ray equipment, one being electrical shock, and the other the damage done as the result of

requires attention unless he has entered into an agreement limiting the service. In event he is called only for a specific occasion or service he is under no duty to continue his services.

The above consideration of the elements of malpractice should serve as a general guide in avoiding charges of "bad professional treatment". In broad terms we may conclude that the veterinarian who is well qualified and who conscientiously does his work should have little to fear from the bugaboo of malpractice.

cumulative effects of x-ray on the body tissues. The first danger may occur due to the necessity for high voltage at the x-ray tube for the production of x-radiation.

The other hazard—a very important one, especially to the small animal practitioner—arises from the absorption of x-radiation by the operator, patient, or anyone else in its field of influence; and, because its effects are not apparent immediately after exposure takes place, it becomes necessary to have a complete understanding of what it is and the precautions necessary for adequate protection.

Effects

The physiological effects of x-ray are dependent, among other things, upon the cumulative absorption over a given period. Fortunately, however, the living body is capable of throwing off these effects if the total quantity absorbed within a given time is not too great. Whether by cumulative absorption or from continuous exposure, an overdose of x-ray produces blood changes, loss of hair, malignancies, malfunction of internal organs, erythemas, and the like, the latter usually referred to as "x-ray burns". The first manifestation of too much exposure to a given part may be a loss of hair or reddening of the skin. However, all of these do not necessarily follow, for effects are tied up completely with the rate of absorption and the character of the absorbed radiation. As with those upon deep-seated organs, skin effects vary from those which time and freedom from radiation will correct to those which are so gross as to require surgical or other intervention, and those leading even to permanent injury or worse.

Knowledge of Radiography

In common with many other diagnostic agents, x-rays make available infor-